

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

VIRNETX INC., et al.,

Plaintiffs,

v.

APPLE INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§
§

C.A. No. 6:12-cv-00855-RWS

JURY TRIAL DEMANDED

APPLE INC.’S NOTICE REGARDING QUARTERLY ACCOUNTING

Pursuant to the Court’s January 6, 2021 Order (“the Order”), Apple Inc. has been providing an accounting of accused units on a quarterly basis. *See* Dkt. 1037 at 16.

The two patents that were the subject of the Order have now expired: U.S. Patent No. 6,502,135 expired on October 29, 2019, and U.S. Patent No. 7,490,151 expired on January 24, 2022. “[W]hen [a] patent expires, the patentee’s prerogatives expire too, and the right to make or use the article, free from all restriction, passes to the public.” *Kimble v. Marvel Entm’t, LLC*, 576 U.S. 446, 451 (2015); *see also Brulotte v. Thys Co.*, 379 U.S. 29, 30 (1964) (“We conclude that the judgment below must be reversed insofar as it allows royalties to be collected which accrued after the last of the patents incorporated into the machines had expired.”). Because both asserted patents are now expired, no further accountings should be required. Apple provided its final accounting to VirnetX on May 12, 2022.

Apple has conferred with VirnetX on this issue, and VirnetX agrees that no further accounting is required by Apple.

Dated: June 30, 2022

Respectfully submitted,

/s/ Michael E. Jones

Gregory S. Arovas
greg.arovas@kirkland.com
Robert A. Appleby
robert.appleby@kirkland.com
Jeanne M. Heffernan
jeanne.heffernan@kirkland.com
Joseph A. Loy
joseph.loy@kirkland.com
Leslie Schmidt
leslie.schmidt@kirkland.com
Aaron Resetarits
aaron.resetarits@kirkland.com
Nathaniel L. DeLucia
nathaniel.delucia@kirkland.com
Ryan Jin
ryan.jin@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Akshay S. Deoras
akshay.deoras@kirkland.com
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Michael E. Jones, Lead Attorney
Texas Bar No. 10969400
mikejones@potterminton.com
POTTER MINTON
A Professional Corporation
110 N. College Avenue, Suite 500
Tyler, Texas 75702
Telephone: (903) 597-8311
Facsimile: (903) 593-0846

ATTORNEYS FOR APPLE INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on June 30, 2022. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Michael E. Jones